STATE OF MICHIGAN

COURT OF APPEALS

WATERCHASE ASSOCIATES, L.L.C., EDWARD ROSE ASSOCIATES, INC., RAMBLEWOOD, LTD., REAL ESTATE GROUP, PEPPERCORN APARTMENTS, L.L.C., OAKHILL PRDO APARTMENTS, L.L.C., PRAIRIE CREEK APARTMENTS, L.L.C., CAMBRIDGE PARTNERS, INC., and RICHARD BOLKEMA and HAROLD PLOEG, d/b/a PARKVIEW GROUP,

Plaintiffs-Appellants,

V

CITY OF WYOMING,

Defendant-Appellee.

UNPUBLISHED
September 4, 2001

No. 225209
Kent Circuit Court
LC No. 98-011313-CZ

Before: Fitzgerald, P.J., and Gage and C.H. Miel*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting in part and denying in part their motion for summary disposition. We affirm.

The Michigan Housing Act, MCL 125.401 *et seq.*, requires municipalities with populations exceeding 10,000 to implement an inspection program for rental properties located within their boundaries. MCL 125.526(1). A municipality may charge a fee for such inspections. The fee cannot exceed the actual cost of the inspections. MCL 125.526(12). Defendant adopted an ordinance and resolutions establishing an inspection schedule and a schedule of fees payable by rental property owners. The fees did not correspond to the number of units actually inspected in each building or complex.

Plaintiffs, owners of rental properties within defendant's boundaries, filed suit alleging that the registration fees violated both MCL 125.526(12), and the Headlee Amendment, Const 1963, art 9, § 31. The Headlee Amendment provides in pertinent part:

* Circuit judge, sitting on the Court of Appeals by assignment.

> Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon.

Plaintiffs moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that no issue of fact existed as to whether the inspection fees violated MCL 125.526(12) because they exceeded the actual costs of providing the inspections, and Const 1963, art 9, § 31 because they were taxes imposed or sought to be imposed without prior voter approval. The trial court granted in part and denied in part plaintiffs' motion. The court determined that the fees violated MCL 125.526(12), and enjoined implementation of the fees on that basis. The court concluded plaintiffs' argument regarding Const 1963, art 9, § 31 was moot; however, in order to provide plaintiffs with a complete ruling, presumed that the fee was not a tax.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

In determining whether a charge imposed by a unit of government is a fee or a tax, a court must consider: (1) whether the charge serves a regulatory purpose rather than operates as a means of raising revenue; (2) whether the charge is proportionate to the necessary costs of the service to which it is related; and (3) whether the payor has the ability to refuse or limit its use of the service to which the charge is related. *Bolt v Lansing*, 459 Mich 152, 161-169; 587 NW2d 264 (1998). Whether a charge is a fee or a tax is a question of law which we review de novo on appeal. *Id*., 158.

Plaintiffs argue that the trial court erred by holding that defendant's inspection fees did not violate Const 1963, art 9, § 31. We disagree and affirm the trial court's decision. Defendant's rental property inspection program is mandated by statute, MCL 125.526(1), and the imposition of a fee to administer the program is authorized by statute. MCL 125.526(12). The fees were imposed to implement the inspection program only, and were not sufficient to pay all allowable costs, i.e., salaries and other costs solely attributable to the program itself. *Saginaw County v John Sexton Corp*, 232 Mich App 202, 211-212; 591 NW2d 52 (1998). The fees were not designed to provide revenue to pay for unrelated costs such as infrastructure, and thus did not fail the first and second criteria of the test for distinguishing a fee from a tax. Cf. *Bolt*, *supra*, 163. In addition, the fees were not imposed on all property owners within defendant's boundaries, as was the service charge rejected as an unconstitutional tax in *Bolt*, *supra*, but were imposed only on those parties who chose to own multiple rental units. We conclude that defendant's inspection charge was a valid regulatory fee. Summary disposition was properly granted on this issue.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage
/s/ Charles H. Miel